

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 877 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R B PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR BJ JADEJA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 10/10/97

ORAL JUDGEMENT

Heard Ld. Advocate for the petitioners. No one appears on behalf of respondent nos. 1 & 2, though Board shows that Govt. Pleader appears.

The petitioners have filed this petition under Articles 226 & 227 of the Constitution of India challenging the judgment and order passed by the Asstt. Collector, Dhrangadhra in RTS Case No. 135/81-82

confirmed in appeal by the Revenue Secretary (Appeals) in SRD-RTS-93/83 and 479/84.

Of the petitioners, petitioner nos. 1 & 5 had lands in their joint names which they partitioned in the year 1968 and entries in village form no.6 was made being Nos. 123 & 124. The land mentioned in Entry No.123 came to the share of Patel Girdharbhai Bhikhabhai i.e. petitioner no.5 while those mentioned in Entry No.124 came to the share of petitioner no.1. Petitioner No.1 & 5 thereafter made oral partition between their sons. Petitioner no.1 made partition not only with his sons, but with the sons of his brother, while Girdharbhai petitioner no.5 partitioned with his sons only. Said partition is entered vide Entry Nos. 476 & 477 on 27.4.1972. Entry No.477 pertains to the partition between petitioner no.5 and his sons while Entry No.476 pertains to the partition between petitioner no.1, his sons and sons of his brother Girdharbhai. The said entries were sought to be revised by the Asstt. Collector in exercise of powers under sec. 106A of Gujarat Land Revenue Rules, read with sec.211 of the Bombay Land Revenue Code ( "Code" for short ). After hearing the parties, Asstt. Collector set aside entry being Entry No. 476 while confirmed the same with respect to Entry No.477. The petitioners being aggrieved filed an appeal before the Revenue Secretary ( Appeals ) who also after hearing the parties, confirmed the order passed by the Asstt. Collector. This order of the Asstt. Collector as confirmed by the Revenue Secretary ( Appeals ) is assailed in this petition.

In my opinion, this petition can be disposed of on a technical ground of limitation. First entries being Entry Nos. 123 & 124 were entered on 20.5.1958 while entries being Entry No. 476 & 477 were made on 13.4.1972 and the same were certified on 26.6.1972. Supreme Court, in the case of Raghav Natha, reported in 1969(1) GLR 992, has held that revisional powers under sec. 211 of the Code cannot be exercised beyond reasonable period of three months. Under the Code, there is no specific period prescribed for exercise of revisional powers. Under the Limitation Act, where-ever period of limitation is prescribed for exercising revisional powers, at the most, the same is 90 days and if a case does not fall in any of the specified article, even if we stretch, it may fall under residuary clause which prescribes maximum three years. Certain rights of prescription and easements are acquired beyond the period of 12 years or so under the Limitation Act. When the Code does not

prescribe any period of limitation for exercise of revisional powers and when Supreme Court in the case of Raghav Natha (Supra) has specifically held that revisional powers under the Code cannot be exercised beyond a period of three months, the exercise of revisional powers by the Asstt. Collector in the instant case after about 12 years, can be said to be hopelessly beyond the period which cannot be said to be reasonable one. In the instant case, more or less, there appears to be a formal arrangement which does not adversely affect the rights of any one. Assuming that partition affects right of some of the members of the family, then also, said members have stated before the Court by filing affidavit that they have no objection if said partition is accepted and entries as made are confirmed. It is also not shown on behalf of the State more particularly when no one appears on behalf of the State, that how State is going to be affected adversely by these entries whereby the question of considering legality of the said entries is required to be examined. In view of these facts, exercise of revisional powers by the Asstt. Collector is contrary to the judgment of the Supreme Court in the case of Raghav Natha ( Supra ). Hence, the said order, as confirmed in appeal, is required to be set aside.

In the result, petition is allowed. Order passed by the Asstt. Collector, as confirmed in appeal, is hereby quashed and set aside. Rule is made absolute. There shall be no order as to costs.

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